

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ROBERT CAPUTO,

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF
BROOKLYN, NEW YORK and CHURCH
OF SAINT THOMAS AQUINAS,
FLATLANDS, BROOKLYN,*Defendants.*

Index No.

VERIFIED COMPLAINT**JURY TRIAL DEMANDED**

Plaintiff ROBERT CAPUTO, by his attorney Jacqueline Carey, Esq., brings this action against The Roman Catholic Diocese of Brooklyn, New York (“Diocese of Brooklyn”) and The Church of Saint Thomas Aquinas, Flatlands, Brooklyn (“St. Thomas RCC”) alleging, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants’ principal place of business is in New York and Defendants transact business within New York.

2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of New York pursuant to CPLR 503 in that Plaintiff resides in New York County.

4. Plaintiff brings this action against Defendants pursuant to New York's Child Victims Act (N.Y. C.P.L.R. Sec. 214-g).

PARTIES

5. Plaintiff Robert Caputo ("Plaintiff") is an individual residing in New York County, New York.

6. Defendant The Roman Catholic Diocese of Brooklyn, New York ("Diocese of Brooklyn") is a religious corporation organized pursuant to the Religious Corporations Law, with its principal office at 310 Prospect Park West in Brooklyn, New York.

7. At all relevant times, the Diocese of Brooklyn created, oversaw, managed, controlled, directed and operated parishes or churches of the Diocese of Brooklyn including the Church of St. Thomas Aquinas, Flatlands, Brooklyn.

8. At all relevant times, the Diocese of Brooklyn managed, supervised, employed, directed and/or controlled priests assigned to work in parishes or churches of the Diocese of Brooklyn including Father Oscar DiCarlo ("Fr. DiCarlo").

9. At all relevant times, priests assigned to the Diocese of Brooklyn were agents, managers, directors, or employees of the Diocese of Brooklyn.

10. Defendant Church of St. Thomas Aquinas, Flatlands, Brooklyn ("St. Thomas RCC") is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 1550 Hendrickson Street, Brooklyn, New York.

11. At all relevant times, St. Thomas RCC was and has been a Roman Catholic Church or parish within and under the authority of the Diocese of Brooklyn which created, oversaw, managed, controlled, directed and operated St. Thomas RCC.

12. At all relevant times, priests assigned to St. Thomas RCC were agents, managers, directors, or employees of St. Thomas RCC and the Diocese of Brooklyn.

FACTS COMMON TO ALL CLAIMS

13. Plaintiff and his family were parishioners of and attended St. Thomas RCC when Plaintiff was a minor child during the 1950s and 1960s.

14. Father DiCarlo was a priest assigned by Defendant Diocese of Brooklyn to St. Thomas RCC at all relevant times.

15. Through his position with the Defendants, Fr. DiCarlo was put in direct contact with Plaintiff.

16. Plaintiff was invited by Fr. DiCarlo to actively participate in church activities including acting as an altar boy.

17. In 1961, when Plaintiff was eleven years old, he was sexually assaulted by Fr. DiCarlo inside of the priest's room at the rectory of St. Thomas RCC. The sexual abuse continued for two years until 1963.

18. Fr. DiCarlo used church activities at St. Thomas RCC to gain access to Plaintiff in order to sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

19. At all times material hereto Fr. DiCarlo was under the management, supervision, employ, direction and/or control of Defendants Diocese of Brooklyn and St. Thomas RCC.

20. The Diocese of Brooklyn knew for decades that its priests were using their positions within the Church to sexually abuse children. Despite that knowledge, the Diocese of Brooklyn failed to take reasonable steps to protect children from being sexually abused by priests and/or actively concealed the abuse.

21. Defendants Diocese of Brooklyn and St. Thomas RCC knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the unlawful sexual activities of Fr. DiCarlo who sexually abused Plaintiff.

22. Defendants had the responsibility to manage, supervise, control and/or direct priests who served at St. Thomas RCC.

23. Defendants Diocese of Brooklyn and St. Thomas RCC had a duty to the Plaintiff to ensure that Defendants did not offer the opportunity for a pedophile priest to approach and sexually assault him as a vulnerable child. Defendants knew and/or should have known that Father DiCarlo used his position at St. Thomas RCC to form an acquaintance with a minor child that could be, and was, used to provide opportunities for sexual abuse.

24. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendants' actions, as well as other damages related thereto, as a result of his childhood sexual abuse.

25. As a direct result of Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity.

CAUSES OF ACTION

FIRST CAUSE OF ACTION Negligent Hiring/Retention/Supervision/Direction

26. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 25 as if fully set forth herein.

27. Defendants Diocese of Brooklyn and St. Thomas RCC at all relevant times represented or otherwise indicated to parishioners of St. Thomas RCC that minor children would be physically safe while in the presence of priests assigned to St. Thomas RCC. Defendants Diocese of Brooklyn and St. Thomas RCC entered into an express and/or implied duty to provide that when Plaintiff was a minor and left in the presence of a priest assigned to St. Thomas RCC, Plaintiff would be kept reasonably safe and that priests would not sexually assault Plaintiff.

28. Defendants Diocese of Brooklyn and St. Thomas RCC owed a duty of care to all minor children, including Plaintiff, who were likely to come in contact with Fr. DiCarlo to ensure that Fr. DiCarlo did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

29. Fr. DiCarlo sexually assaulted, sexually abused and/or had sexual contact with Plaintiff while assigned to St. Thomas RCC.

30. Defendants Diocese of Brooklyn and St. Thomas RCC knew or should have known of Fr. DiCarlo's propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of the injuries' occurrence.

31. Defendants Diocese of Brooklyn and St. Thomas RCC negligently hired, retained, directed, and supervised Fr. DiCarlo as they knew or should have known that Fr. DiCarlo posed a threat of sexual abuse to children.

32. Defendants Diocese of Brooklyn and St. Thomas RCC were negligent in failing properly to supervise Fr. DiCarlo.

33. The sexual abuse of children by priests is a foreseeable result of negligence.

34. At all times material hereto, Defendants Diocese of Brooklyn and St. Thomas RCC were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

35. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

36. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally, and/or in the alternative, for compensatory damages, and punitive damages, together with interest and costs.

**SECOND CAUSE OF ACTION
Negligence/Gross Negligence**

37. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 25 as if fully set forth herein.

38. At all times material hereto, with regard to the allegations contained herein, Fr. DiCarlo was under the supervision, employ, direction and/or control of Defendants Diocese of Brooklyn and St. Thomas RCC.

39. Defendants Diocese of Brooklyn and St. Thomas RCC owed Plaintiff, a minor, at the relevant times, a duty to protect him from Father DiCarlo's sexual assaults and the consequent damages.

40. Defendants Diocese of Brooklyn and St. Thomas RCC knew, or were negligent in not knowing, that Defendant Father DiCarlo posed a threat of sexual abuse to children.

41. The criminal acts of Defendant Father DiCarlo described hereinabove were undertaken, and/or enabled, during the course and within the scope of his employment, appointment, assignment, and/or agency with the Defendants Diocese of Brooklyn and St. Thomas RCC.

42. Defendants Diocese of Brooklyn and St. Thomas RCC's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

43. Defendants Diocese of Brooklyn and St. Thomas RCC gave improper or ambiguous orders and/or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others; failed adequately to supervise the activities of Father DiCarlo; permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct, and allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

44. At all times material hereto, Defendants Diocese of Brooklyn and St. Thomas RCC's actions and omissions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

45. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

46. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION
Breach of Non-Delegable Duty

47. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 25 as if fully set forth herein.

48. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Diocese of Brooklyn and St. Thomas RCC for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in religious activities. There existed a non-delegable duty of trust between Plaintiff and Defendants.

49. Plaintiff was a vulnerable child when placed within the care of the Defendants Diocese of Brooklyn and St. Thomas RCC.

50. As a consequence, Defendants Diocese of Brooklyn and St. Thomas RCC were in the best position to prevent Father DiCarlo's sexual abuse of Plaintiff, or to learn of that sexual abuse of Plaintiff and stop it.

51. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Brooklyn and St. Thomas RCC, Defendants breached their non-delegable duty to Plaintiff.

52. At all times material hereto Father DiCarlo was under the supervision, employ, direction and/or control of the Defendants Diocese of Brooklyn and St. Thomas RCC.

53. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

54. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

**FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty**

55. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 25 as if fully set forth herein.

56. While he was a minor, Plaintiff was entrusted to the control and supervision of Father DiCarlo for the purpose of engaging in religious activities. During the times that Plaintiff was entrusted to the care of Father DiCarlo, Fr. DiCarlo was under the supervision and control of Defendants Diocese of Brooklyn and St. Thomas RCC.

57. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Brooklyn and St. Thomas RCC. The entrustment of the Plaintiff to the care and supervision of the Defendants while the Plaintiff was a minor child, required these Defendants to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect him due to his youth and vulnerability.

58. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

59. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

60. Defendants breached their fiduciary duties to Plaintiff.

61. At all times material hereto, Defendants were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

62. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

63. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

64. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 25 as if fully set forth herein.

65. As described above, the actions of Defendants Diocese of Brooklyn and St. Thomas RCC and/or their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

66. Defendants' actions endangered Plaintiff and caused him to fear for his own safety.

67. As a direct and proximate result of Defendants' acts, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered severe injuries and damages described herein; including but not limited to mental and emotional distress.

68. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION
Breach of Duty *in Loco Parentis*

69. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 25 as if fully set forth herein.

70. While he was a minor, Plaintiff was entrusted to the care of Father DiCarlo in order to participate in religious activities. During the times that Plaintiff was entrusted to him, Father DiCarlo was under the supervision and control of Defendants Diocese of Brooklyn and St. Thomas RCC. These Defendants owed a duty to children entrusted to them, including Plaintiff, to act *in loco parentis* and to prevent foreseeable injuries.

71. Defendants breached their duty to act *in loco parentis*.

72. At all times material hereto Defendants were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

73. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

74. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

**SEVENTH CAUSE OF ACTION
Sexual Assault**

75. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 25 as if fully set forth herein.

76. Father DiCarlo did sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

77. By repeatedly sexually assaulting, sexually abusing, and/or having sexual contact with Plaintiff, Father DiCarlo placed Plaintiff in imminent and reasonable apprehension of harmful and offensive contact.

78. By repeatedly sexually assaulting, sexually abusing, and/or having sexual contact with Plaintiff, Father DiCarlo acted so as to cause repeated unjustified, harmful and offensive physical contact with Plaintiff.

79. As a direct result of Father DiCarlo's conduct, Plaintiff has suffered the injuries and damages described herein.

80. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

**EIGHTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress**

81. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 25 as if fully set forth herein.

82. Father DiCarlo's actions endangered Plaintiff's safety and caused him to fear for his own safety.

83. As a direct and proximate result of Father DiCarlo's actions Plaintiff suffered severe injuries and damages described herein; including but not limited to mental and emotional distress.

84. By reason of the foregoing, Defendants jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

WHEREFORE, Plaintiff demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: New York, New York

October 24, 2019



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New York, NY 10166
(800) 541-0635
jcarey@careylegal.org

VERIFICATION

STATE OF NEW YORK

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ss.:

COUNTY OF NEW YORK

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Robert Caputo, being duly sworn, deposes and says that deponent is the Plaintiff in this action and has read this Complaint; deponent knows its content and knows that it is true to the best of deponent's knowledge, except as to those matters stated to be upon information and belief, and as to those matters deponent believes them to be true.

(X) Robert Caputo

Robert Caputo

Sworn to before me this 24 day October, 2019

JG
NOTARY PUBLIC - STATE OF NEW YORK

JACQUELINE G CAREY
Notary Public, State of New York
No. 02CA6349887
Qualified in New York County
Commission Expires October 31, 2020